

INITIAL STATEMENT OF REASONS
FOR PROPOSED ACTION UNDER THE
CORPORATE SECURITIES LAW OF 1968

As required by Section 11346.2 of the Government Code, the Commissioner of Corporations ("Commissioner") sets forth below the reasons for the amendments to Section 260.102.14 of Title 10 of the California Code of Regulations (Rule 260.102.14).

The Corporate Securities Law of 1968 (the "CSL," Corporations Code Section 25000, et seq.) requires the offer or sale of securities in this state to be either qualified, exempt from qualification, or not subject to qualification. Section 25102(f) of the Corporations Code sets forth an exemption from the qualification requirement for transactions where (1) the sale is to 35 or fewer persons, (2) each purchaser has a preexisting relationship with the securities issuer or business or financial experience to protect his or her own interests, (3) each purchaser represents the purchase is for that person's own account, (4) the offer or sale is not accomplished through advertising, and (5) the issuer files a notice with the Department of Corporations ("Department") within 15 days of the first transaction. Section 25102(f)(4) further provides that the Commissioner may by rule require the issuer to file a notice of transactions. Rule 260.102.14 sets forth the form for the filing of the notice, and the accompanying instructions. Rule 260.102.14 currently allows (but does not require) an issuer to file a note of transfer.

The proposed amendments to Rule 260.102.14 require the online filing of the notice in lieu of the paper form.

The mandated electronic filing process is needed to improve government efficiency and service to the public, and to reduce operating costs. Senate Bill 220 (Chapter 273, Statutes of 2003) allows the California Corporations Commissioner to prescribe circumstances under which to accept electronic records, as specified. Among other things, SB 220 added Corporations Code Section 25620 to provide, in part: "The Legislature hereby finds and declares that the Department of Corporations has continuously implemented methods to file records electronically, including broker-dealer and investment adviser applications, and is encouraged to continue to expand its use of electronic filing to the extent feasible, as budget, resources, and equipment are made available to accomplish this goal."

This rulemaking amends subsection (e) of Rule 260.102.14 to carry out the goal of expanding electronic filings, as encouraged by the Legislature. To avoid any unreasonable burden or expense to an issuer that cannot file electronically, this proposed rulemaking also adds subsection (f) to Rule 260.102.14. As proposed, subsection (f) would allow an issuer to file the paper notice in person or by mail only if: (1) computer equipment including hardware and software is unavailable to the issuer without unreasonable burden or expense, or it is impossible for the issuer to obtain and provide the information requested on the notice through electronic filing. This exception is needed to accommodate an issuer based on these types of hardship. In addition, the proposed rule requires the issuer to file with the notice a cover letter fully explaining: (1) the reason(s) why the computer equipment, including hardware and software, is unavailable without unreasonable burden or expense; and (2) the description(s) of the

unreasonable burden or expense to the issuer to make the electronic filing. In the case where the issuer cannot obtain and provide information requested on the electronic notice or Internet filing process without unreasonable burden or expense, subsection (f) provides an additional exception and requires a cover letter explaining the reasons and unreasonable burden or expense, as specified. The hardship exception proposed in subsection (f) is similar to the exception provided by the Securities and Exchange Commission under Regulation S-T (69 Fed. Reg. 22704 (April 26, 2004)) and provides flexibility for the issuer in cases where unreasonable burden or expense makes it impossible or impracticable to file the notice through electronic means. While the Department understands the term "unreasonable" burden or expense may lack clarity, the Department prefers to leave this term undefined for two reasons. First, leaving this term undefined will enable the issuer to have sufficient flexibility to determine the extent of the burden or expense involved in filing the notice electronically. Second, the Department desires to review the exceptions filed in the future, to determine how the term "unreasonable" can be clarified based on a sample of ongoing filings. The Department does not anticipate many hardship exception filings since issuers are likely to either own, or have access to, computer equipment with Internet capability, and are likely to obtain and provide the requested information.

As a final note, this rulemaking also amends subsections (a) and (c) of Rule 260.102.14 to conform to the changes made in subsection (e) and to clarify the filing obligations of issuers pursuant to the modified rule.

ECONOMIC IMPACT GOVERNMENT CODE SECTION 11346.2(b)(4)

The Department has made an initial determination that the proposed regulations will not have a significant adverse economic impact on business.

ALTERNATIVES CONSIDERED

No reasonable alternative considered by the Department or that otherwise has been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small businesses. A hardship exception has been considered and provided by this rulemaking, to allow paper filings under certain limited conditions.

FISCAL IMPACT

Cost to Local Agencies and School Districts required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.

No other nondiscretionary cost or savings are imposed on local agencies.

DETERMINATIONS

The Commissioner has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, which require reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government

Code.